

August 14, 2013

VIA ECFS

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Universal Service Contribution Methodology; Request for Review by inContact, Inc. of a Decision by Universal Service Administrator*, WC Docket No. 06-122

Dear Chairman and Commissioners:

InContact, Inc. ("inContact" or "the Company"), by its counsel, requests the Federal Communications Commission ("Commission" or "FCC"), or its Wireline Competition Bureau ("Bureau"), order the Universal Service Administrative Company ("USAC") to credit (or refund) inContact for any penalties and interest imposed on the 2009 true-up of Universal Service Fund ("USF") contributions for the 2003 revenue year (as reported in the Company's 2004 Form 499-A). Through the Company's request, inContact seeks treatment consistent with similarly situated USF contributors by USAC.

On September 27, 2013, the Bureau waived similar penalties and interest on a six-year delayed USAC true-up invoice issued to Outfitter Satellite, Inc. ("Outfitter").¹ In the Outfitter Order, the Bureau waived the interest and penalties associated with a true-up adjustment where USAC failed to bill for six years.² The Bureau concluded that, given the special circumstances involved in the Outfitter Order, strict enforcement of the interest and penalty rules would be inconsistent with the public interest and result in ineffective administration of the USF.³

Like Outfitter, inContact received an invoice from USAC for nearly \$300,000 in true-up adjustments to the Company's 2003 revenues, filed on its 2004 Form 499-A, nearly five years later on January 23, 2009. Notwithstanding the similarities between Outfitter and inContact, the Commission denied as untimely filed inContact's Request for Review and Waiver and Application for

¹ *In re Universal Service Contribution Methodology: Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) ("Outfitter Order").

² *Id.* at 13364.

³ *Id.*

MARASHLIAN & DONAHUE, LLC

TELEPHONE: (703) 714-1300
FACSIMILE: (703) 714-1330
EMAIL: MAIL@COMMLAWGROUP.COM
WEB: WWW.COMMLAWGROUP.COM

THE COMMLAW GROUP
1420 SPRING HILL ROAD
SUITE 401
MCLEAN, VIRGINIA 22102

Review of USAC's invoice.⁴ However, the Bureau recently accepted and granted a Peak Communications Request for Review after the deadline for review of USAC action established by the Commission's rules.⁵

InContact agrees with the Bureau's reasoning in the Peak Order that imposition of the interest and penalties associated with a clerical error on Peak's November 2013 Form 499-Q filing would be inequitable and disproportionately penalize Peak, but the Company also believes the Commission must apply its rules in a non-discriminatory manner. The Commission cannot reject inContact's Request for Review as untimely filed because it missed the filing deadline by 20 days but grant Peak's Request for Review filed more than three months after the filing deadline for review of the invoice Peak received.⁶

The Bureau established that invoicing a true-up adjustment after a long delay is not in the public interest in its Outfitter Order, and the Bureau established that it will grant a late-filed request for review where the penalty would be disproportionate in its Peak Order. Therefore, the Commission should order USAC to credit (or refund) for any penalties or interest imposed on inContact's 2009 true-up invoice that were based on adjustments its 2004 Form 499-A filing.

Respectfully submitted,



Jonathan S. Marashlian, Esq.
Counsel for inContact, Inc.

⁴ *In re Universal Service Contribution Methodology; Request for Review by inContact, Inc. of a Decision by Universal Service Administrator*, WC Docket No. 06-122, Order, 25 FCC Rcd 4739 (WCB 2010); *In re Universal Service Contribution Methodology/Application for Review of a Decision by the Wireline Competition Bureau by inContact, Inc.*, WC Docket No. 06-122, Memorandum Opinion and Order, 27 FCC Rcd 632 (2012).

⁵ *In re Emergency Request for Review by Peak Communications, Inc. of a Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, WC Docket Nos. 96-45 and 06-122, Order (Rel. Aug. 12, 2014) ("Peak Order").

⁶ Peak received a USAC invoice and attempted to file a revised Form 499-Q in January 2014. Peak Order at 1. Peak filed its Request for Review on July 15, 2014. *Id.* at 1 n.2. The latest the Commission's 60 day deadline for review of a USAC decision could have run for a January invoice and a January attempt to file a revised Form 499-Q would have been early April.